

Guidelines for Characterizing Drycleaner Violations

Introduction

Department of Environmental Protection (DEP) Directive 923 is the Department's controlling enforcement document. These guidelines are intended to complement Directive 923 to determine the appropriate amount of civil and administrative penalties to seek when settling enforcement actions. These guidelines are intended to provide a rational, fair, and consistent method to determine the appropriate enforcement response for Drycleaner violations.

****While as a general matter, Florida does recognize that "the statute of limitations in environmental contexts where there is a continuing invasion of rights does not begin to run until the wrongful invasion of rights that constitutes the violation ceases," instances where violations are approaching the 4 year mark should be reviewed as soon as possible with the Office of General Counsel to preserve all legal options.**

Administrative Penalties

Under the Environmental Litigation and Reform Act (ELRA), the Department can seek an administrative penalty for certain violations pursuant to s. 403.121(2), Florida Statutes (F.S.). Administrative penalty amounts are stipulated by statute and cannot not exceed \$10,000 per assessment when calculated in accordance with the applicable sections of 403.121, F.S. For additional details, see DEP Directive 923.

Violation (statutory language)	ELRA Base Penalty	Cite (F.S.)
Failure to properly report a release or spill of any drycleaning solvent totaling more than one quart.	\$500	ELRA 403.121(4)(f)
For failure to register with the Department after 30 days of the start of operations	\$500	
For failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section.	\$500	ELRA 403.121(5)
Failure to seal or otherwise render impervious floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released.	\$500	
For failure to install, maintain, or use a required pollution control system or device.	\$4,000	ELRA 403.121(4)(b)
Failure to install maintain or use secondary containment around each machine, tank system (including ancillary piping etc.) or items of equipment in which drycleaning solvents are used and around any area in which solvents or waste-containing solvents are stored	\$4,000	

Guidelines for Characterizing Drycleaner Violations

Violation (statutory language)	ELRA Base Penalty	Cite (F.S.)
For storage tank system and petroleum contamination violations, the department shall assess a penalty of \$5,000 for failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.	\$5,000	ELRA 403.121(3)(g)
For storage tank system and petroleum contamination violations, the department shall assess a penalty of \$5,000 ... when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.	\$5,000	

Multi-Day Penalties and Adjustment Factors

DEP Directive 923 discusses when and how to assess multi-day penalties. The directive also sets out various adjustment factors to be used when calculating a penalty based on the matrix. These factors include:

- Knowing, deliberate, or chronic violations.
- Good faith efforts to comply (or lack of good faith efforts to comply) either prior to or after Department discovery of the violation.
- History of noncompliance.
- Economic benefit of noncompliance.
- Ability to pay.
- Other unique factors.

In-Kind Penalties and Pollution Prevention Projects

In-Kind Penalties and Pollution Prevention Projects should be considered as provided in Directive 923.

Peer Review and Penalty Amount Approvals

In all cases where a proposed solid waste penalty exceeds \$10,000, a peer review by the Division of Waste Management is required and the Deputy Secretary must approve the proposed penalty. The Secretary must approve proposed penalties of \$50,000 or more.